7 SM 07.02.2025.

WPA 26740 of 2024

Binoy Kolay
Vs.
Senior Joint Commissioner, State Tax, Bally Circle & 03 Ors.

Mr. Arya Das
Mr. Amit Kumar Shaw
... for the petitioner
Mr. A. Roy
Md. T. M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
... for the state

Report filed by the respondent authorities is kept with the record.

Learned Counsel appearing for the petitioner submits that the petitioner was served with an order for the period 2017-2018 on 30th of March, 2023 against which an appeal was preferred by the petitioner and the appellate authority rejected the appeal on the ground of limitation. In the meantime, a second adjudication order was passed by the authorities for the self same period.

Learned Counsel prays for quashing of the second adjudication order which has been passed for the period 2017-2018 and to give a direction upon the appellate authority to consider the appeal on merit instead of dismissing it on the ground of delay.

Learned Counsel appearing for the respondent authorities relying on paragraph 5 to 8 of the report in the form of an affidavit submits:

"5. That a report under Section 73 of the WBGST Act, 2017 in form GST DRC-07 vide reference no.AD 190323026969Y date: 30.03.2023 in respect of short payment of tax, excess availed ITC under CGST/SGST Act, 2017 was passed by my predecessor, the Senior Joint Commissioner of Revenue, Bally Circle vide Memo No.181/BY) dated 29.03.2023.

6. That a demand was created in the portal in form GST DRC-07 vide reference no.AD 190323026969Y Date: 30.03.2023 (See Rule 142(5)) with an advice to pay tax of Rs.3,59,074.26/-, interest of Rs.573,379/-, and penalty of Rs.35,548/-. Total payable amount stands at Rs.9,68,001.26/-.

7. That a separate demand in form GST DRC-07 was also created in the portal with reference no. ZD190323026914D dated 30.03.2023 by mistake, showing tax payable, interest & penalty of Rs.3,59,074,26/-, Rs.7,28,421.00/- & Rs.35,908.00/- respectively totaling of Rs.11,23,403.00/-.

8. I tender unconditional apology for issuing

inadvertently 2(two) demands in respect of one adjudicating order passed by the concerned proper officer. Thus, in the said circumstances, this Hon'ble Court may be pleased to allow remittance of the amount of Rs.10,96,403/- which was recovered from the writ petitioner subsequent to the filing of his appeal."

Heard learned counsels for the parties.

On perusal of the report it is clearly seen that the second adjudication order passed on 30th of March, 2023 has been inadvertently passed by the concerned authorities and this Court quashes the concerned adjudication order dated 30th of March, 2023.

On perusal of the order of the appellate authority dated 27.09.2024 it is seen that the appellate authority has failed to exercise jurisdiction vested in it and thereby ignoring the observations made by the Hon'ble Division Bench of this Court in the case of ***S. K. Chakraborty & Sons v. Union of India & Ors., reported in 2023 SCC Online Cal 4759***.

Having regard to the above and taking note of the explanation given by the petitioner, while setting aside the order dated 27th September, 2024, I condone the delay in preferring the appeal.

Accordingly, I direct the appellate authority to hear and dispose of the appeal, on merit, upon giving an opportunity of hearing to the petitioner, within a period of twelve weeks from the date of communication of this order.

With the above observations and directions, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)